

RECORDATION NO. 10813 Filed 1425

SEP 14 1979 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

September 13, 1979

Secretary  
Interstate Commerce Commission  
Washington, D. C. 20423

No. 0-3374680  
Date SEP 14 1979  
Fee \$50.00

Gentlemen:

ICC Washington

Enclosed are an original and two counterparts of a Conditional Sale Agreement, dated as of September 14, 1979 by and between Pullman Incorporated (Pullman Standard Division) and Benjamin J. Tarbutton, Jr. and the related Agreement and Assignment between Pullman Incorporated (Pullman Standard Division) and The Citizens and Southern National Bank. This document is for recordation pursuant to 49 U.S.C. § 11303.

The names and addresses of the parties to the conditional sale transaction are as follows:

Vendor

Pullman Incorporated  
(Pullman Standard Division)  
200 South Michigan Avenue  
Chicago, Illinois 60604

Purchaser

Benjamin J. Tarbutton, Jr.  
Box 260  
Linton Road  
Sandersville, Georgia 31082

There is no guarantor involved in this transaction.

The names and addresses of the parties to the related agreement and assignment transaction are as follows:

Assignor

Pullman Incorporated  
(Pullman Standard Division)  
200 South Michigan Avenue  
Chicago, Illinois 60604

Assignee

The Citizens and Southern  
National Bank  
35 Broad Street, N. W.  
Atlanta, Georgia 30303

The description of the equipment is as follows:

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A; SAN 10,000 - 10,099.

Please return the original document to:

SEP 14 1979  
RECEIVED  
FEDERAL RESERVE BANK  
ATLANTA, GA

*Nancy M. Lytle*  
*Caruth*

If by mail:

James K. Hasson, Jr., Esq.  
Sutherland, Asbill & Brennan  
3100 First National Bank Tower  
Atlanta, Georgia 30303

If by hand:

George H. Bostick, Esquire  
or  
Nancy M. Lytle, Legal Assistant  
Sutherland, Asbill & Brennan  
1666 K Street, N. W.  
Washington, D. C. 20006

Respectfully submitted,

THE CITIZENS AND SOUTHERN NATIONAL BANK

By:  V.P.

**Interstate Commerce Commission**  
Washington, D.C. 20423

9/14/79

OFFICE OF THE SECRETARY

George H. Bostick, Esq.  
Sutherland, Asbill & Brennan  
1666 K.St., N.W.  
Washington, D.C. 20006

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 9/14/79 at 1:15pm, and assigned recordation number(s). 10813

Sincerely yours,

*Agatha L. Mergenovich*  
Agatha L. Mergenovich  
Secretary

Enclosure(s)

CONDITIONAL SALE AGREEMENT

BETWEEN

PULLMAN INCORPORATED

(Pullman Standard Division)

as Seller,

and

BENJAMIN J. TARBUTTON, JR.

10813

RECORDATION NO. .... Filed 1425

SEP 14 1979 - 1 15 PM

INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

BETWEEN

PULLMAN INCORPORATED

(Pullman Standard Division)

as Assignor,

and

THE CITIZENS AND SOUTHERN NATIONAL BANK

as Assignee

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One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A.

SAN 10,000 - 10,099

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Dated as of

September 14, 1979

CONDITIONAL SALE AGREEMENT

BETWEEN

PULLMAN INCORPORATED

(Pullman Standard Division)

as Seller,

and

BENJAMIN J. TARBUTTON, JR.

as Buyer

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A; SAN 10,000 - 10,099.

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Dated as of

September 14, 1979

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THIS AGREEMENT, dated as of September 14, 1979, by and between PULLMAN INCORPORATED, a Delaware corporation (PULLMAN STANDARD Division) (hereinafter referred to as the "Seller"), and BENJAMIN J. TARBUTTON, JR., a resident of Sandersville, Georgia (hereinafter referred to as the "Buyer");

1. CONSTRUCTION, SALE AND DELIVERY. The Seller hereby agrees to construct, in accordance with the specifications hereinafter referred to, and to sell and deliver to the Buyer, and the Buyer hereby agrees to buy from the Seller and to accept delivery, and to pay therefor as herein- after set forth, the following described railroad equipment (such railroad equipment being hereinafter referred to collectively as "cars" and separately as "car"):

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A; SAN 10,000 - 10,099.

The purchase price for the cars as of the date of this Agreement is \$41,200 per car for a total purchase price of \$4,120,000 f.o.b. Seller's plant in Bessemer, Alabama, subject to the price adjustment provision of Seller's proposal, and shall be payable in accordance with the terms and conditions set forth in Annex III attached hereto and made a part hereof.

2. INSPECTION AND DELIVERY. The cars shall be subject, during construction, to inspection by the Buyer or one or more inspectors or other authorized representatives of the Buyer, and the Buyer may be present or keep one or more inspectors or authorized representatives at the plant of the Seller during the construction of the cars to inspect the cars.

Upon completion of each car by the Seller, the Seller shall present such cars to the Buyer or such inspector or authorized representative for inspection, and if such cars conform to the Specifications applicable thereto the Buyer or such inspector or authorized representative shall execute and deliver to the Seller a Certificate of Inspection substantially in the form of Annex I hereto stating that such car has been inspected and found to be completed in accordance with this Agreement and the applicable Specifications.

The Seller agrees to deliver the cars to the Buyer or authorized representative of the Buyer at Bessemer, Alabama. The Buyer shall be present, or shall appoint and arrange to have present an authorized representative, to accept delivery of the cars, at the place of delivery of the cars. If the cars are then found to be in good order the Buyer or such representative shall accept the delivery thereof and execute and deliver to the Seller a Certificate of Acceptance, in duplicate, substantially in the form of Annex II hereto, stating that the cars have been delivered in good order and accepted by the Buyer or on his behalf. Such Certificate of Inspection and such Certificate of Acceptance shall be final and conclusive evidence that the cars conform in workmanship, material, construction and all other respects to the requirements and provisions of this Agreement, without prejudice to the rights of the Buyer under the warranty of material and workmanship hereinafter set forth in Section 18, and shall constitute conclusive evidence that such cars have been duly delivered to and accepted by the Buyer. On delivery of the cars hereunder the Buyer will assume with respect thereto the responsibility and risk of loss.

The Seller agrees to use its best efforts to deliver the cars

in September, 1979, or such later date as shall be mutually agreed upon by the Buyer and the Seller subject to delays caused by strikes, fires, accident or other causes or contingencies beyond the Seller's control and its ability to secure materials.

3. PAYMENT OF PURCHASE PRICE. The Buyer hereby acknowledges himself to be indebted to Seller in the amount of, and hereby promises to pay to the Seller, the purchase price of the cars at the time and in the manner set forth in Annex III hereto.

4. TITLE TO THE CARS. The Seller shall, and hereby does, retain the full legal title to, and property rights and a security interest in, any and all of said cars until Buyer shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Buyer, notwithstanding the delivery of the cars to, and the right to the use thereof, by the Buyer as herein provided.

The Buyer agrees that it will not during the continuance of this Agreement change the road numbers of said cars unless and until 60 days written notice of any proposed change shall have been given by the Buyer to the Seller, or to the assignee of the Seller, as the case may be.

The Buyer will not allow the name of any person, association, or corporation other than the name of the Buyer or the name of the railroad company to which the cars are deployed or leased, or both, to be placed on the cars or any replacements thereof, as a designation that might be interpreted as a claim of ownership thereof; but the Buyer may letter such cars with the name, initials or other insignia, customarily used by the Buyer or by such railroad company, or both, on its cars of the same or similar character for convenience of identification of the Buyer's

or such railroad company's right to use such cars.

When and only when the Seller has been paid the full purchase price for said cars, together with interest and any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained have been performed by the Buyer, absolute right to possession of, title to and property in the cars shall pass to and vest in the Buyer without further transfer or action on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer a bill or bills of sale of said cars, transferring all of its right, title and interest in and to said cars to the Buyer free and clear of all liens and encumbrances created or retained hereby, or otherwise created or authorized by the Seller against said cars and shall execute for record or for filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to said cars; provided, however, that if the Seller shall have assigned its interest in and to said cars and its rights hereunder pursuant to Section 14 hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said cars to the Buyer and warranting the same, but only against the acts and deeds of such assignee.

5. TAXES. No deduction shall be made from any payment by the Buyer hereunder for any taxes, assessments or governmental charges levied or imposed upon the cars or the Seller, or measured by the sale of the cars by the Seller, or upon the sale, shipment, delivery, or use thereof. The Buyer agrees to pay or to reimburse the Seller for all taxes, assessments and charges which may be assessed, levied or imposed upon the Seller (or which the Seller may be required to pay to any governmental

body) with respect to or measured by the sale of the cars by the Seller, or which may be imposed upon or with respect to the delivery of the cars to or their use by the Buyer, other than any income taxes resulting from the sale of the cars by Seller to the Buyer.

The Buyer shall also promptly pay all taxes, assessments and governmental charges which from time to time may be imposed upon the cars, or the earnings arising therefrom, or operations thereof, or upon the Seller by reason of its ownership thereof, by any governmental body having jurisdiction over the cars.

6. PATENTS. The Seller will assume all responsibility for and will hold the Buyer harmless from and against any and all damages, costs, royalties and claims arising out of patent infringements which may be alleged in respect of the cars, or any part thereof, excepting those patents covering the manufacture, sale or use in said cars or any part thereof, of designs, devices, parts, arrangements, specialties and equipment specified or furnished by the Buyer and not manufactured by or originating with the Seller; and as to such excepted patents the Buyer will in like manner assume responsibility and hold the Seller harmless. Each party will promptly notify the other in writing of any claim of patent infringement arising out of this Agreement, and the party assuming responsibility will promptly undertake the defense thereof. The obligations contained in this Section 6 shall survive the termination of this Agreement or the transfer of title to the cars to the Buyer.

7. INDEMNITY. The Buyer agrees to indemnify and save harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof,

and any expenses in connection therewith, including counsel fees, arising out of retention by Seller of title to the cars and out of the use and operation thereof by the Buyer during the period that title thereto remains in the Seller, including without limitation, liability for any negligent act of Buyer or for strict liability in tort.

At all times after the delivery of the cars, the Buyer will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the cars or any part thereof; provided, however, that the Seller shall not be relieved from its guaranty covering material and workmanship hereinafter in Section 18 set forth. The obligations contained in this Section 7 shall survive the termination of this Agreement or the transfer of title to the cars to Buyers.

8. USE AND LOCATION. The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the cars and the use thereof (including, subject to Section 15 of this Agreement, the right to lease the cars to, or to have the cars deployed on its behalf by, any railroad) from and after delivery of the cars by the Seller to the Buyer, but only upon and subject to all the terms and conditions of this Agreement.

9. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. The Buyer shall comply with all the applicable laws of each jurisdiction in or through which the cars may be operated, covering the deployment, usage, operation or maintenance thereof, and with all the applicable rules and regulations of each governmental body exercising any power or jurisdiction over the cars. In the event any of such laws, rules or regulations require any alteration of, or any additional equipment or appliance on the cars or

any part thereof, the Buyer shall immediately comply therewith at its own expense; and the Buyer shall maintain the cars in proper condition for operation under such laws, rules and regulations during the continuance of this Agreement; provided, however, that upon written notice to the Seller the Buyer shall not be required to comply with any such law, rule or regulation the validity of which the Buyer shall at the time be contesting in good faith by appropriate legal proceedings, unless in the judgment of the Seller its title and interest in the cars may be materially endangered by such noncompliance.

10. REPORTS AND INSPECTION. The Buyer hereby agrees to furnish to the Seller, on or before January 15 of every year as long as this Agreement shall be in force, an accurate inventory of the cars in actual service, the number and description of such cars as may have been destroyed and replaced by others, and the then location of said cars.

Within twenty (20) days after receiving advice of damage or destruction of any of the cars, Buyer shall give Seller written notice thereof, with full particulars of the extent of the loss or damage incurred.

The Seller shall have the right, but shall be under no obligation, to inspect the cars and the books and records of the Buyer relating to the maintenance and deployment or leasing of the cars at any reasonable time or times during the continuance of this Agreement.

11. MAINTENANCE, REPLACEMENTS, AND INSURANCE. The Buyer covenants and agrees that at all times after the delivery of such cars, it will maintain and keep said cars in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss, or destruction of said cars from whatever cause arising.

The Buyer shall replace the cars, or any parts thereof, at its own cost, except as otherwise herein provided, if the cars or any of them shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other cars or parts of similar type and of substantially as good materials or construction as that lost or destroyed, or the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such car or cars, which amount shall be treated as a prepayment of, and applied at the election of the Buyer as provided in, the Promissory Note referred to in Annex III (hereinafter called the "Note"). The Buyer will cause any such replacement cars to be marked as the cars so replaced. Any and all such replacements of cars and of any parts shall constitute accessions to the cars and shall be subject to all of the terms and conditions of this Agreement as though part of the original cars delivered hereunder, and included in the word "cars" as used in this Agreement. Title to all such replacement cars shall be taken initially, and shall remain, in the name of the Seller, subject to the provisions hereof.

The Buyer will for a period of one year after delivery and acceptance of the cars and at its expense keep the cars insured (with loss payable to Seller and Buyer as their interests may appear) in a company or companies approved by the Seller against loss, damage or destruction thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion, which insurance shall provide for \$1,000,000 of coverage with a deductible of \$25,000 per car. The Buyer shall deliver to Seller the policies for such insurance or certificates therefor. Each policy in respect of such insurance shall provide for ten days' prior written notice to Seller of the cancellation

of any such insurance and shall further provide that, as to the interest of Seller, such insurance shall not be altered or impaired by any act or omission of anyone other than Seller. In the event that Buyer shall fail to keep the cars insured as above provided, Seller, without impairment of any of its rights and remedies by reason of such default, may, but shall not be required to, obtain appropriate insurance and pay the premium or premiums therefor and in such event Buyer shall and will reimburse Seller for the amount of the premium so paid with interest at eight percent (8%) from the date of payment.

Any monies paid under any such insurance policy shall be applied at the election of the Buyer (i) as a prepayment of, and applied at the election of the Buyer as provided in, the Note or (ii) to the replacement or repair of such cars. In the event that the monies are to be applied to such replacement or repair, they shall be retained by the Seller until replacement or repair of the cars lost, destroyed or damaged, but upon proof satisfactory to the Seller of such replacement or repair and if the Buyer is not then in default in any of its obligations thereunder, the Seller shall pay over such monies to the Buyer. Any monies receivable by or payable to the Buyer from any railroad, or other person or corporation because of loss or destruction of or damage to said cars for any cause whatever shall be paid over to Seller to be held and applied by it as aforesaid.

12. DEFAULT: REMEDIES UPON DEFAULT.

A. Each of the following shall constitute an event of default by the Buyer:

- (1) nonpayment of any sum due hereunder or under the Note, which nonpayment is not cured within ten (10)

days of the due date;

- (ii) if any representation or warranty made by the Buyer or any statement or certificate furnished by the Buyer in connection with this Agreement proves untrue in any material respect and shall not be cured within thirty (30) days after notice thereof to the Buyer or if there is any failure in the due or proper performance of, or compliance with any condition, term, or stipulation provided herein and such default is not cured within thirty (30) days after written notice thereof to the Buyer;
- (iii) the insolvency of the Buyer; any assignment by the Buyer for the benefit of creditors; the filing against the Buyer of a bankruptcy petition or a petition for an arrangement under any present or future act of Congress on the subject of bankruptcy, which petition is not vacated within thirty (30) days after its appointment; filing by the Buyer of a bankruptcy petition or petition for an arrangement under any present or future acts of Congress on the subject of bankruptcy; the failure of the Buyer to vacate the appointment of a receiver or a trustee for the Buyer or any interest in the Buyer's business within thirty (30) days after such appointment; the failure of the Buyer to vacate the institution of any proceeding against the Buyer for any relief under any law relating to the relief of debtors or adjustment of indebtedness of any sort;

B. Upon the occurrence of any event of default by the Buyer, the Seller may at its option:

- (i) declare each and all of the said installment payments under the Note and all other sums of money payable hereunder to be forthwith due and payable;
- (ii) take immediate possession of said cars, including any equipment or parts substituted, added or attached thereto, without demand, process or further notice and, for this purpose, the Seller shall have the right to enter upon the premises wherever said cars may be found, remove the same, employ any available trackage and similar facilities or means of removing same, or cause the Buyer to assist in removing same and the Buyer hereby covenants agrees that he will, at his own expense, forthwith and in the usual manner, cause the cars to be promptly moved to a point or points that shall have been reasonably designated by the Seller, and shall there deliver the same or cause them to be delivered to the Seller. (It is hereby expressly agreed that the covenants in this paragraph are of the essence of this Agreement and that upon application to any court having jurisdiction, the Seller shall be entitled to a decree against the Buyer requiring the specific performance thereof);
- (iii) while retaining or collecting any or all payments theretofore made or payable hereunder by Buyer to Seller, Seller shall have the right to sell said cars

at public or private sale or sales with or without having said cars at the place of sale, upon such reasonable terms and in such manner as the Seller may determine in its sole discretion. The Buyer agrees that the Seller may bid at any such public sale. From the proceeds of any such sale, the Seller shall be entitled to deduct all expenses for retaking, repairing and selling said cars. The balance thereof shall be applied to the total amount due pursuant to this Agreement, including all reasonable costs of collection and expenses including attorney's fees. Any surplus shall be paid over to the Buyer; and in the case of a deficiency, the Buyer shall pay the full amount of such deficiency with interest at the rate of 15%.

In addition, the Seller shall have all rights and remedies under, and take any and all action as provided in, the Uniform Commercial Code as enacted in the State of Georgia. Without limiting the foregoing, the Seller may exercise any one or more or all, and in any order, of the remedies hereinbefore set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute.

13. PROHIBITION AGAINST LIENS. The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through, or under the Buyer and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the cars, but

shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the cars, or which will not affect Seller's ability to collect the unpaid balance due hereunder. In the event Seller reasonably believes that such lien or charge is not being contested in good faith and by appropriate legal proceedings by Buyer, Seller shall so notify Buyer and Buyer shall promptly satisfy and discharge such lien or charge.

14. ASSIGNMENTS BY THE SELLER. All or any of the rights, privileges and benefits of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Buyer to the Seller, may be assigned by the Seller and reassigned by any assignee at any time and from time to time, and one or more participation rights in the rights, privileges and benefits may be sold by the Seller or any assignee of the Seller, and all provisions contained herein to the benefit of Seller shall be and remain enforceable by any assignee of the Seller; provided, however, that any such assignment shall not subject any assignee to, nor relieve Seller, or the successors to its manufacturing property and business, from any of the obligations of the Seller as to the construction, delivery, guaranty, warranty or indemnity, or any other duty, obligation or liability hereunder, except the duty to execute necessary and proper instruments of transfer as and when the Buyer shall be entitled thereto, pursuant to the provisions of Section 4 hereof, and the duty to credit on the purchase price monies or cash remitted to such assignee by the Buyer, as provided in Section 3 hereof.

In case of assignment of this Agreement by the Seller, prompt written notice of such assignment shall be given by the Seller to the

Buyer, and the Buyer shall be protected in any payments made hereunder to the Seller prior to notice of such assignment.

In the event that this Agreement be assigned by the Seller as hereinbefore provided, the rights of such assignee to the entire unpaid purchase price, or such part thereof as may be assigned, together with interest thereon as well as any other rights or benefits, including indemnity, hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Seller, or the successor or successors to its manufacturing property and business, in respect of the cars or the manufacture, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor be subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer by Seller, or the successor or successors to its manufacturing property and business, and any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyer against and only against Seller and the successor or successors to its manufacturing property and business, and shall not be enforceable against any party or parties in whom title to the cars or any of them, or the rights of the Seller hereunder, shall vest by reason of any sale, assignment, or transfer, or successive sales, assignments or transfers.

15. SUCCESSORS TO, AND ASSIGNMENTS BY, THE BUYER. The Buyer hereby represents and warrants that all the obligations existing or to accrue to the Buyer under this Agreement shall be assumed by any person or corporation acquiring title to or any leasehold interest in the cars, and that upon any sale or lease of the cars, any person or corporation

acquiring title thereto or a leasehold interest therein shall also, as a condition to such acquisition, be bound by all such obligations. It is agreed that any railroad company with which Buyer enters into a deployment agreement shall not be required to assume such obligations solely by reason of the deployment of the cars by it on behalf of the Buyer pursuant to such deployment agreement.

The Buyer covenants and agrees that it will not sell, assign, transfer, or otherwise dispose of its rights under this Agreement, nor transfer its interest in said cars to any other firm, person, or corporation without first obtaining the written consent of the Seller to such sale, assignment or transfer.

The Buyer hereby covenants and agrees that it will not pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of said cars.

16. PRELIMINARY CONDITIONS. Prior to delivery of the cars by the Seller, the Buyer will deliver, in duplicate, to the Seller and to the assignee provided in Annex III an opinion of counsel for the Buyer in scope and substance satisfactory to the Seller and its counsel:

- A. As to the due execution and delivery hereof by the Buyer and legality, validity and enforceability hereof as against the Buyer in accordance with the terms hereof; and
- B. To the effect that the consummation of the transactions herein contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property of the Buyer under any indenture, mortgage, deed of trust, bank loan or credit agreement, or other agreement or instrument (other than this Agreement) known to counsel to which the Buyer is a party or by which he may be bound.

In rendering such opinion, counsel may rely, to the extent counsel deems

such reliance necessary or appropriate, upon certificates of governmental officials and the Buyer and acknowledgments by notaries public of execution by Buyer, and may state (i) that enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, (ii) that the rights and remedies set forth in this Agreement are subject to other applicable state and Federal laws which, in such counsel's opinion, will not materially interfere with the practical realization of the benefits of the security intended to be provided by this Agreement, and (iii) that no opinion is expressed that any particular provision of this Agreement is specifically enforceable.

17. FILING. The Buyer shall at its own cost and expense:
- A. Promptly cause this Agreement, all agreements supplemental hereto or amendatory hereof, and the first assignment of any of the Seller's rights hereunder to be duly filed wherever required in the United States of America for the proper protection of Seller's title to the cars and of its rights hereunder;
  - B. From time to time do and perform all other acts and execute, acknowledge and deliver and file wherever required in the United States of America any and all further instruments required by law or reasonably requested by the Seller for the purpose of such protection of its title and rights or for the purpose of carrying out the intention of this Agreement;
  - C. Duly refile in each such jurisdiction each of the instruments referred to in the preceding Subsections A and B whenever required for such protection of the Seller's title and rights;
  - D. Pay all taxes and fees in connection with each such filing and refiling; and
  - E. Promptly furnish to the Seller a certificate or other evidence of each such filing, refiling and payment of filing fees and taxes, satisfactory to the Seller.

As used in this Agreement, the term "filing" shall also include registering, recording and docketing and the term "refiling" shall

also include re-registering, re-recording and re-docketing.

Buyer shall prepare and file, or cause to be prepared and filed, all documents relating to the registration, maintenance and record-keeping functions involving the cars. Such documents shall include but are not limited to the following:

- (i) registration in Official Railway Equipment Register and the Universal Machine Language Equipment Register; and
- (ii) such reports as may be required from time to time by the ICC and other regulatory agencies.

Buyer shall perform all necessary recordkeeping functions related to the use of the cars by any railroad in accordance with AAR Railroad Interchange Agreements and Rules, such as car hire reconciliation. All such records, and all records of payments, charges and correspondence relating to the cars shall be separately recorded and maintained by Buyer in a form suitable for reasonable inspection by the Seller from time to time during regular business hours of the Buyer or Buyer's agent.

18. SELLER'S WARRANTY OF MATERIAL AND WORKMANSHIP. Seller guarantees to build the cars in accordance with the applicable Specifications, and that the cars will be free from defects in material and workmanship under normal use and service. Seller's obligation under this warranty shall be limited to making good at its plant any part or parts of any car which shall be returned to the Seller within one year after delivery of such car, with transportation charges prepaid and which Seller's examination shall disclose with satisfaction such part or parts to have been thus defective; provided, however, this warranty shall be subject to the following exclusions and conditions:

- 1. Items or specialties, specified or supplied by the Buyer

and not manufactured by the Seller, are excluded from this warranty.

2. Warranty coverage on car running gear and contact points to car structure is limited to one (1) year or 25,000 miles, whichever first occurs. (Car running gear and contact points to car structure utilize components to A.A.R. specifications to provide maximum car service life. The direct relationship between car mileage and service life limits the coverage of these components as specified in this item 2.)
3. Normal use and service may require inspection, adjustment, maintenance, and compliance with all regulatory agencies' known or pending requirements and/or Seller's instructions. This obligation is the Buyer's responsibility and such performance is necessary to preserve stated warranty coverage.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE SELLER. THE SELLER SHALL NOT BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.

19. MODIFICATION OF AGREEMENT. This Agreement of conditional sale constitutes the entire agreement between the Buyer and the Seller with respect to the sale of the cars herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by the Buyer and duly authorized officers of the Seller.

20. NOTICES. Any notice to or demand upon the Buyer by the

Seller pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to Benjamin J. Tarbutton, Jr., Box 260, Linton Road, Sandersville, Georgia 31082 or at such other address as the Buyer shall hereafter specify in writing to the Seller.

Any notice to or demand upon the Seller by the Buyer pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to the Seller at 200 South Michigan Avenue, Chicago, Illinois 60604, or at such other address as the Seller shall hereafter specify in writing to the Buyer.

Any notice to or demand upon any assignee by the Buyer pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to such assignee at the address of such assignee specified in the assignment relating to it or at such other address as such assignee shall thereafter specify in writing to the Buyer.

21. DEFINITIONS. The term "Seller" whenever used in this Agreement means (i) before any assignment of any of its rights hereunder, Pullman Incorporated (Pullman Standard Division), or any successor or successors to its manufacturing properties and business, and (ii) after any such assignment, any assignee or assignees of such particular assigned rights as regards such rights, and also the original assignor, Pullman Incorporated, as regards any rights hereunder that are retained and not included in any such assignment.

22. SEVERABILITY OF CLAUSES. Any provisions of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying as to such juris-

diction the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Buyer and Seller to the full extent permitted by law.

23. EXTENSION NOT A WAIVER. Time is of the essence of this Agreement. Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

24. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; but the Seller shall be entitled to such additional rights arising out of the filing hereof or any assignments hereof as shall be governed by the laws of any jurisdiction in which this agreement or any assignment hereof shall be filed.

25. SUCCESSORS. This Agreement shall inure to the benefit of and remain binding upon, the successors and assigns of the parties hereto, respectively.

26. SECTION HEADINGS. Section headings herein are for convenience only and shall not affect the interpretation hereof.

27. EXECUTION IN COUNTERPARTS. This Agreement and any agreement supplemental hereto or amendatory hereof, may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument. Although this Agreement is dated for convenience as of September 14, 1979, the actual date or dates of execution hereof by the

parties hereto is or are, respectively, the date or dates stated in the acknowledgements annexed hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PULLMAN INCORPORATED  
(Pullman Standard Division)

By: R. E. Lynch  
Vice President - Freight Unit

ATTEST:

W. E. Baker  
Assistant Secretary

\_\_\_\_\_  
Benjamin J. Tarbutton, Jr. (L.S.)

ANNEX I

CERTIFICATE OF INSPECTION

The undersigned, being [Benjamin J. Tarbutton, Jr. or his duly authorized representative] hereby certifies that he has inspected nos.

\_\_\_\_\_ of the following railroad equipment:

[Insert Number of Cars] XM Boxcars, PS Lot 1043-B,  
Pullman's proposal dated July 3, 1979, Benjamin J.  
Tarbutton, Jr.'s order dated August 23, 1979, Pullman  
Standard's Specification No. 1042 dated March 29, 1979,  
as amended, General Arrangement Drawing No. M024216-A,  
SAN \_\_\_\_\_ - \_\_\_\_\_

built by Pullman Incorporated (Pullman Standard Division) (hereinafter referred to as "Pullman Standard") in pursuance of that certain Conditional Sale Agreement between Pullman Standard and said Benjamin J. Tarbutton, Jr., dated as of September 14, 1979; and he further certifies that said cars have been completed in full accordance with the requirements of said Agreement and the Specifications therein contained.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_

ANNEX II

CERTIFICATE OF ACCEPTANCE

The undersigned, being [Benjamin J. Tarbutton, Jr. or his duly authorized representative] hereby certifies that the following described railroad equipment:

[Insert Number of Cars] XM Boxcars, PS Lot 1043-B;

Pullman's proposal dated July 3, 1979; Benjamin J.

Tarbutton, Jr.'s order dated August 23, 1979; Pullman

Standard's Specification No. 1042, dated March 29,

1979 as amended; General Arrangement Drawing

No. M042416-A, SAN \_\_\_\_\_-

have been delivered in good order and running condition by Pullman Incorporated (Pullman Standard Division) (hereinafter referred to as "Pullman Standard") and were accepted by the undersigned on \_\_\_\_\_, 1979 at \_\_\_\_\_, \_\_\_\_\_, in accordance with the provisions of that certain Conditional Sale Agreement dated as of September 14, 1979, between Pullman Standard and Benjamin J. Tarbutton, Jr.

Dated: \_\_\_\_\_, 1979.

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### ANNEX III

#### TERMS OF FINANCING

There will be a single collective date of closing which shall be subsequent to the delivery and acceptance by Buyer of the last of the cars pursuant to this Conditional Sale Agreement and after receipt by The Citizens and Southern National Bank of the documents specified in Section 6 of the Agreement and Assignment between Pullman Incorporated ("Pullman") as Assignor and The Citizens and Southern National Bank as Assignee, dated as of September 14, 1979, which document is concurrently being executed with this Conditional Sale Agreement. Said closing date will not be more than ten (10) days after receipt of Pullman's invoice. On this closing date Buyer will pay to Seller twenty percent (20%) of the purchase price due under this Conditional Sale Agreement, and will execute and deliver the Promissory Note for the remaining eighty percent (80%) substantially in the form attached hereto (the "Note"). The Note shall provide that payments shall be made as follows: (i) a payment of all accrued and unpaid interest shall be made on March 1, 1980; (ii) twenty-nine (29) payments of principal and all accrued and unpaid interest thereon shall be made quarterly commencing on June 1, 1980 and continuing on the first day of September, December, March and June thereafter through June 1, 1987, the amount of the principal payment at each such date to equal 1.37931 percent of the total purchase price due under the Conditional Sale Agreement; and (iii) a final payment of all unpaid principal and accrued and unpaid interest thereon to be due and payable September 1, 1987. No interest on the purchase price of any of the cars shall accrue prior to the closing date. On the closing date, The Citizens and Southern National Bank will pay to Seller for the assignment of Seller's rights hereunder the purchase price specified in the Agreement and Assignment referred to above.

PROMISSORY NOTE

Atlanta, Georgia  
\_\_\_\_\_, 1979

FOR VALUE RECEIVED, the undersigned promises to pay to the order of PULLMAN INCORPORATED (hereinafter, together with any subsequent holder hereof, referred to as the "Holder"), at such place as Holder may from time to time designate in writing, without grace, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS, together with interest on the unpaid balance thereon from the date hereof at the rate of 10-1/4 per cent per annum, payable as follows:

- (i) Accrued interest on the total balance outstanding shall be paid on March 1, 1980;
- (ii) Twenty-nine (29) equal payments of principal of \$ \_\_\_\_\_ with accrued and unpaid interest thereon shall be payable quarterly commencing on June 1, 1980 and continuing on the first day of each September, December, March and June thereafter through June 1, 1987; and
- (iii) A final payment of all unpaid principal and accrued and unpaid interest thereon shall be paid on September 1, 1987.

Interest payable hereunder shall be computed based upon the actual number of days in each calendar year.

The indebtedness evidenced hereby may be prepaid in whole or in part at any time, and from time to time, without penalty or premium. The amount of any prepayment and the application thereof shall be as designated in writing by the undersigned at the time such prepayment shall be made.

This Note is executed in connection with a Conditional Sale Agreement between Pullman Incorporated and the undersigned (the "Conditional Sale Agreement") dated September 14, 1979.

The Holder shall have the optional right to declare the amount of the total indebtedness evidenced by this Note to

be due and forthwith payable in advance of the maturity date of any installment, as fixed herein, upon the failure of the undersigned to pay, when due, any one of the installments hereon, or upon the occurrence of any event of default on the part of the undersigned in the Conditional Sale Agreement. Upon the exercise of this option by the Holder, the entire unpaid balance shall bear interest at the rate of fifteen (15%) percent per annum until paid.

Time is of the essence of this Note and, in the event this Note is collected by law or through an attorney at law, or under advice therefrom, the undersigned agrees to pay all costs of collection included fifteen (15%) percent of the principal and interest as attorneys' fees.

The undersigned, and all endorsers and other parties hereto, hereby jointly and severally waive presentment, demand for payment, protest and notice for demand for payment, protest and notice of nonpayment and any and all other notices required by law with respect thereto. The undersigned further renounces, for himself and family, any and all homestead and other exemption rights or other rights intended for the benefit of debtors which are waivable, which he or his family may have by virtue of the laws of any State, or the United States, against this debt or any renewal or extension thereof.

No failure of the Holder to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All rights, powers and remedies set forth in the Conditional Sale Agreement or herein are cumulative and are not exclusive of any other rights, powers and remedies provided by law.

IN WITNESS WHEREOF, the undersigned has set his hand and seal all as of the day and year first above written.

\_\_\_\_\_  
Benjamin J. Tarbutton, Jr. (SEAL)

ACKNOWLEDGMENTS OF EXECUTION OF  
CONDITIONAL SALE AGREEMENT

PULLMAN INCORPORATED

STATE OF ILLINOIS

COUNTY OF COOK

On this 13<sup>th</sup> day of September, 1979, before me personally appeared R. E. Lynch, to me personally known, who being by me duly sworn, says that he is the Vice President - Incharge of Pullman Incorporated (Pullman Standard Division), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

James K. Restani  
Notary Public

My Commission Expires:

August 7, 1983

ACKNOWLEDGMENTS OF EXECUTION OF  
CONDITIONAL SALE AGREEMENT

BENJAMIN J. TARBUTTON, JR.

STATE OF GEORGIA

COUNTY OF WASHINGTON

On this \_\_\_\_\_ day of September, 1979, before me personally appeared BENJAMIN J. TARBUTTON, JR., to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

AGREEMENT AND ASSIGNMENT

BETWEEN

PULLMAN INCORPORATED

(Pullman Standard Division)

As Assignor,

and

THE CITIZENS AND SOUTHERN NATIONAL BANK

As Assignee

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979 as amended; General Arrangement Drawing No. M042416-A, SAN 10,000-10,099

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Dated as of

September 14, 1979

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THIS AGREEMENT AND ASSIGNMENT, dated as of September 14, 1979 between PULLMAN INCORPORATED, a Delaware corporation (PULLMAN STANDARD Division) hereinafter called the "Manufacturer," and THE CITIZENS AND SOUTHERN NATIONAL BANK, having a usual place of business in Atlanta, Georgia, hereinafter called the "Assignee";

W I T N E S S E T H:

WHEREAS, Manufacturer and Benjamin J. Tarbutton, Jr. (hereinafter called the "Buyer"), entered into a Conditional Sale Agreement dated as of September 14, 1979 (hereinafter called the "Conditional Sale Agreement") for the sale by Manufacturer to Buyer of One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Buyer's order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979 as amended; General Arrangement Drawing No. M042416-A, SAN-10,000 to 10,099, both inclusive, all hereinafter referred to as the "cars," all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto.

NOW, THEREFORE, this Agreement and Assignment witnesseth that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Assignee to Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of Manufacturer in and to the Conditional Sale Agreement (except the right to manufacture the cars and the right to receive reimbursement for taxes paid or incurred by the Manufacturer as provided in Section 5 thereof) in respect of the cars, the Note as set forth in Annex III to the Conditional Sale Agreement (hereinafter called the "Note") and any other sums

becoming due under the Conditional Sale Agreement in respect of the cars; and all right, title and interest of Manufacturer in and to the cars as the same shall be delivered, upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section 6 hereof for such cars, together with all Manufacturer's rights, powers, privileges and remedies in respect to the cars under the Conditional Sale Agreement, without any recourse, however, against Manufacturer for or on account of the failure of Buyer to make any of the payments provided for in or otherwise to comply with any of the provisions of the Conditional Sale Agreement or the Note. In furtherance of the foregoing assignment and transfer, Manufacturer hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's nominee, to ask, demand, sue for, collect, receive and enforce, any and all sums to which Assignee is or may become entitled under this Assignment and compliance by Buyer with the terms and agreements on its part to be performed under the Conditional Sale Agreement and the Note, but without expense and liability to Manufacturer and for the sole benefit of Assignee.

2. Manufacturer covenants and agrees that it will construct the cars in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all liens and encumbrances, except for the provisions for the Conditional Sale Agreement; that notwithstanding this assignment it will perform and fully comply with each and all of the covenants of the Conditional Sale Agreement to be performed and complied with by it; that, as set forth in and subject to the provisions of the Conditional Sale Agreement, it has

legal and equitable title to the cars and that it has the right to sell the same; that it will warrant and defend the same against the lawful demands of all persons whomsoever based on claims originating prior to the delivery of the cars to the Buyer, subject, however, to the provisions of the Conditional Sale Agreement, and the rights of the Buyer thereunder; and that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance, and do such further acts and things as may be necessary and appropriate to give effect to the provisions contained in this Assignment and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

3. This Agreement and Assignment will not in any way affect or modify (1) Manufacturer's obligation to deliver the cars in accordance with its Conditional Sale Agreement or (2) its obligations (a) to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims and (b) to replace parts, all as set forth in Sections 6 and 18 of the Conditional Sale Agreement, respectively, the said obligations to be and remain enforceable against and only against Manufacturer as provided in the Conditional Sale Agreement.

Manufacturer will indemnify Assignee against and save and keep Assignee harmless from all expense, loss or damage incurred or sustained by Assignee by reason of any defense, set-off or counterclaim of the Buyer in any suit or action brought by Assignee under the Conditional Sale Agreement arising out of the alleged breach by Manufacturer of any of its obligations mentioned in the first paragraph of this Article 3, or arising by reason of any other indebtedness or liability at any time owing to the Buyer by Manufacturer.

4. Manufacturer represents and warrants to Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed by it for a valid consideration and that the Manufacturer has no reasons to believe that it is not a valid and existing contract and, according to its terms, binding upon the parties thereto.

5. Manufacturer agrees to indemnify Assignee and to save and keep it harmless from and against any and all royalties, damages, claims, suits, judgments and costs to the same extent provided to the Buyer in section 7 of the Conditional Sale Agreement.

6. At the Closing referred in Annex III of the Conditional Sale Agreement, Assignee will pay to Manufacturer the aggregate purchase price set forth in Section 1 of the Conditional Sale Agreement for the One Hundred (100) cars upon receipt by Assignee of the following documents in form and substance satisfactory to it:

- (a) A bill of sale from Manufacturer to Assignee transferring to Assignee title to all cars so delivered and warranting said title to be free and clear as of the time of delivery to Buyer of all liens and encumbrances of any nature except only the rights of Buyer under the Conditional Sale Agreement;
- (b) A certificate or certificates of acceptance by an authorized representative of the Buyer stating that the cars covered by such certificate have been accepted by him on behalf of the Buyer as conforming in all

respects to the requirements and provisions of the Conditional Sale Agreement;

- (c) Manufacturer's invoice for the purchase price of said cars so accepted;
- (d) An opinion or opinions of counsel of Manufacturer stating (i) that the Manufacturer is a duly organized and existing corporation in good standing under the laws of the State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that the Conditional Sale Agreement has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms, (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms and (iv) that there are no liens, security interests or other defects in the interests being assigned hereunder.
- (e) An opinion of counsel for the Buyer in scope and substance satisfactory to the Assignee and its counsel:

- (i) As to the compliance by the Buyer with Subsections A and D of Section 17 of the Conditional Sale Agreement;
- (ii) As to the jurisdiction of any Federal or State public regulatory body or bodies over the entering into or performance of the Conditional Sale Agreement, and, if any such regulatory body or bodies has such jurisdiction, the sufficiency of any such authorization or exemption thereof or consent thereto by each such public regulatory body; and
- (iii) To the effect that, based upon a review of the records of the Interstate Commerce Commission, there are no other security interests in the cars.

In case said opinion shall show, pursuant to Subsection (e)(ii) above, that any regulatory body has jurisdiction over the entering into or performance of the Conditional Sale Agreement, copies certified by an appropriate officer of the Buyer of the application of the Buyer to such public regulatory body, and of each amendment thereto, and copies, certified by an appropriate official of such public regulatory body, of each order issued by such public regulatory body upon the basis of such application shall be delivered with such opinion. In rendering such opinion, counsel may rely, to the extent counsel deems such reliance necessary or appropriate, upon certificates of governmental officials and the Buyer.

7. Assignee may assign its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Buyer thereunder in respect of said cars. In the event of any such assignment any such subsequent or successive assignee or assign-

nees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Assignee hereunder.

8. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Georgia.

9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute but one and the same instrument. Assignee agrees to deliver to Buyer one of such counterparts, or a certified copy thereof, in addition to the number required for recording or filing.

IN WITNESS WHEREOF, Manufacturer and Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

PULLMAN INCORPORATED  
(Pullman Standard Division)

By:

R. E. Lynch  
Vice President - Freight Unit

ATTEST:

W. E. Baker  
Assistant Secretary

THE CITIZENS AND SOUTHERN NATIONAL BANK

By:

\_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Vice President

The foregoing Agreement and Assignment is acceptable to the undersigned, and the undersigned does hereby acknowledge receipt of the written notice of such assignment referred to in Section 14 of the Conditional Sale Agreement and does hereby consent to and acquiesce in this assignment.

---

Benjamin J. Tarbutton, Jr.

ACKNOWLEDGMENTS OF EXECUTION OF  
AGREEMENT AND ASSIGNMENT

PULLMAN INCORPORATED

STATE OF ILLINOIS

COUNTY OF COOK

On this 13th day of September, 1979, before me personally appeared RE Lyndal, to me personally known, who being by me duly sworn, says that he is the Vice President - Freight Unit of Pullman Incorporated (Pullman Standard Division), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

James K. Postner  
Notary Public

My Commission Expires:

August 7, 1983

ACKNOWLEDGMENTS OF EXECUTION OF  
AGREEMENT AND ASSIGNMENT

THE CITIZENS AND SOUTHERN NATIONAL BANK

STATE OF GEORGIA

COUNTY OF FULTON

On this \_\_\_\_\_ day of September, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of THE CITIZENS AND SOUTHERN NATIONAL BANK, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

ACKNOWLEDGEMENTS OF EXECUTION OF  
AGREEMENT AND ASSIGNMENT

BENJAMIN J. TARBUTTON, JR.

STATE OF GEORGIA

COUNTY OF WASHINGTON

On this \_\_\_\_\_ day of September, 1979, before me personally appeared BENJAMIN J. TARBUTTON, JR., to me known to be the person described in and who executed the foregoing instrument and he acknowledged that he executed the same as his free act and deed.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

CONDITIONAL SALE AGREEMENT

BETWEEN

PULLMAN INCORPORATED  
(Pullman Standard Division)

as Seller,

and

BENJAMIN J. TARBUTTON, JR.

10813  
RECORDATION NO. .... Filed 1425

SEP 14 1979 - 1 15 PM  
INTERSTATE COMMERCE COMMISSION

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AGREEMENT AND ASSIGNMENT

BETWEEN

PULLMAN INCORPORATED  
(Pullman Standard Division)

as Assignor,

and

THE CITIZENS AND SOUTHERN NATIONAL BANK

as Assignee

---

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A.

SAN 10,000 - 10,099

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Dated as of

September 14, 1979

CONDITIONAL SALE AGREEMENT

BETWEEN

PULLMAN INCORPORATED

(Pullman Standard Division)

as Seller,

and

BENJAMIN J. TARBUTTON, JR.

as Buyer

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A; SAN 10,000 - 10,099.

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Dated as of

September 14, 1979

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THIS AGREEMENT, dated as of September 14, 1979, by and between PULLMAN INCORPORATED, a Delaware corporation (PULLMAN STANDARD Division) (hereinafter referred to as the "Seller"), and BENJAMIN J. TARBUTTON, JR., a resident of Sandersville, Georgia (hereinafter referred to as the "Buyer");

1. CONSTRUCTION, SALE AND DELIVERY. The Seller hereby agrees to construct, in accordance with the specifications hereinafter referred to, and to sell and deliver to the Buyer, and the Buyer hereby agrees to buy from the Seller and to accept delivery, and to pay therefor as hereinafter set forth, the following described railroad equipment (such railroad equipment being hereinafter referred to collectively as "cars" and separately as "car"):

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979, as amended; General Arrangement Drawing No. M042416-A; SAN 10,000 - 10,099.

The purchase price for the cars as of the date of this Agreement is \$41,200 per car for a total purchase price of \$4,120,000 f.o.b. Seller's plant in Bessemer, Alabama, subject to the price adjustment provision of Seller's proposal, and shall be payable in accordance with the terms and conditions set forth in Annex III attached hereto and made a part hereof.

2. INSPECTION AND DELIVERY. The cars shall be subject, during construction, to inspection by the Buyer or one or more inspectors or other authorized representatives of the Buyer, and the Buyer may be present or keep one or more inspectors or authorized representatives at the plant of the Seller during the construction of the cars to inspect the cars.

Upon completion of each car by the Seller, the Seller shall present such cars to the Buyer or such inspector or authorized representative for inspection, and if such cars conform to the Specifications applicable thereto the Buyer or such inspector or authorized representative shall execute and deliver to the Seller a Certificate of Inspection substantially in the form of Annex I hereto stating that such car has been inspected and found to be completed in accordance with this Agreement and the applicable Specifications.

The Seller agrees to deliver the cars to the Buyer or authorized representative of the Buyer at Bessemer, Alabama. The Buyer shall be present, or shall appoint and arrange to have present an authorized representative, to accept delivery of the cars, at the place of delivery of the cars. If the cars are then found to be in good order the Buyer or such representative shall accept the delivery thereof and execute and deliver to the Seller a Certificate of Acceptance, in duplicate, substantially in the form of Annex II hereto, stating that the cars have been delivered in good order and accepted by the Buyer or on his behalf. Such Certificate of Inspection and such Certificate of Acceptance shall be final and conclusive evidence that the cars conform in workmanship, material, construction and all other respects to the requirements and provisions of this Agreement, without prejudice to the rights of the Buyer under the warranty of material and workmanship hereinafter set forth in Section 18, and shall constitute conclusive evidence that such cars have been duly delivered to and accepted by the Buyer. On delivery of the cars hereunder the Buyer will assume with respect thereto the responsibility and risk of loss.

The Seller agrees to use its best efforts to deliver the cars

in September, 1979, or such later date as shall be mutually agreed upon by the Buyer and the Seller subject to delays caused by strikes, fires, accident or other causes or contingencies beyond the Seller's control and its ability to secure materials.

3. PAYMENT OF PURCHASE PRICE. The Buyer hereby acknowledges himself to be indebted to Seller in the amount of, and hereby promises to pay to the Seller, the purchase price of the cars at the time and in the manner set forth in Annex III hereto.

4. TITLE TO THE CARS. The Seller shall, and hereby does, retain the full legal title to, and property rights and a security interest in, any and all of said cars until Buyer shall have made all of the payments, and shall have kept and performed all of the covenants in this Agreement provided to be made, kept or performed by the Buyer, notwithstanding the delivery of the cars to, and the right to the use thereof, by the Buyer as herein provided.

The Buyer agrees that it will not during the continuance of this Agreement change the road numbers of said cars unless and until 60 days written notice of any proposed change shall have been given by the Buyer to the Seller, or to the assignee of the Seller, as the case may be.

The Buyer will not allow the name of any person, association, or corporation other than the name of the Buyer or the name of the railroad company to which the cars are deployed or leased, or both, to be placed on the cars or any replacements thereof, as a designation that might be interpreted as a claim of ownership thereof; but the Buyer may letter such cars with the name, initials or other insignia, customarily used by the Buyer or by such railroad company, or both, on its cars of the same or similar character for convenience of identification of the Buyer's

or such railroad company's right to use such cars.

When and only when the Seller has been paid the full purchase price for said cars, together with interest and any and all other payments as herein provided, and all of the Buyer's covenants and conditions herein contained have been performed by the Buyer, absolute right to possession of, title to and property in the cars shall pass to and vest in the Buyer without further transfer or action on the part of the Seller, except that the Seller shall, if requested by the Buyer so to do, execute and deliver to the Buyer a bill or bills of sale of said cars, transferring all of its right, title and interest in and to said cars to the Buyer free and clear of all liens and encumbrances created or retained hereby, or otherwise created or authorized by the Seller against said cars and shall execute for record or for filing in public offices such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Buyer to said cars; provided, however, that if the Seller shall have assigned its interest in and to said cars and its rights hereunder pursuant to Section 14 hereof, such assignee of the Seller shall execute and deliver to the Buyer a bill of sale conveying said cars to the Buyer and warranting the same, but only against the acts and deeds of such assignee.

5. TAXES. No deduction shall be made from any payment by the Buyer hereunder for any taxes, assessments or governmental charges levied or imposed upon the cars or the Seller, or measured by the sale of the cars by the Seller, or upon the sale, shipment, delivery, or use thereof. The Buyer agrees to pay or to reimburse the Seller for all taxes, assessments and charges which may be assessed, levied or imposed upon the Seller (or which the Seller may be required to pay to any governmental

body) with respect to or measured by the sale of the cars by the Seller, or which may be imposed upon or with respect to the delivery of the cars to or their use by the Buyer, other than any income taxes resulting from the sale of the cars by Seller to the Buyer.

The Buyer shall also promptly pay all taxes, assessments and governmental charges which from time to time may be imposed upon the cars, or the earnings arising therefrom, or operations thereof, or upon the Seller by reason of its ownership thereof, by any governmental body having jurisdiction over the cars.

6. PATENTS. The Seller will assume all responsibility for and will hold the Buyer harmless from and against any and all damages, costs, royalties and claims arising out of patent infringements which may be alleged in respect of the cars, or any part thereof, excepting those patents covering the manufacture, sale or use in said cars or any part thereof, of designs, devices, parts, arrangements, specialties and equipment specified or furnished by the Buyer and not manufactured by or originating with the Seller; and as to such excepted patents the Buyer will in like manner assume responsibility and hold the Seller harmless. Each party will promptly notify the other in writing of any claim of patent infringement arising out of this Agreement, and the party assuming responsibility will promptly undertake the defense thereof. The obligations contained in this Section 6 shall survive the termination of this Agreement or the transfer of title to the cars to the Buyer.

7. INDEMNITY. The Buyer agrees to indemnify and save harmless the Seller from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof,

and any expenses in connection therewith, including counsel fees, arising out of retention by Seller of title to the cars and out of the use and operation thereof by the Buyer during the period that title thereto remains in the Seller, including without limitation, liability for any negligent act of Buyer or for strict liability in tort.

At all times after the delivery of the cars, the Buyer will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of the cars or any part thereof; provided, however, that the Seller shall not be relieved from its guaranty covering material and workmanship hereinafter in Section 18 set forth. The obligations contained in this Section 7 shall survive the termination of this Agreement or the transfer of title to the cars to Buyers.

8. USE AND LOCATION. The Buyer, so long as it shall not be in default under this Agreement, shall be entitled to the possession of the cars and the use thereof (including, subject to Section 15 of this Agreement, the right to lease the cars to, or to have the cars deployed on its behalf by, any railroad) from and after delivery of the cars by the Seller to the Buyer, but only upon and subject to all the terms and conditions of this Agreement.

9. COMPLIANCE WITH LAWS, RULES AND REGULATIONS. The Buyer shall comply with all the applicable laws of each jurisdiction in or through which the cars may be operated, covering the deployment, usage, operation or maintenance thereof, and with all the applicable rules and regulations of each governmental body exercising any power or jurisdiction over the cars. In the event any of such laws, rules or regulations require any alteration of, or any additional equipment or appliance on the cars or

any part thereof, the Buyer shall immediately comply therewith at its own expense; and the Buyer shall maintain the cars in proper condition for operation under such laws, rules and regulations during the continuance of this Agreement; provided, however, that upon written notice to the Seller the Buyer shall not be required to comply with any such law, rule or regulation the validity of which the Buyer shall at the time be contesting in good faith by appropriate legal proceedings, unless in the judgment of the Seller its title and interest in the cars may be materially endangered by such noncompliance.

10. REPORTS AND INSPECTION. The Buyer hereby agrees to furnish to the Seller, on or before January 15 of every year as long as this Agreement shall be in force, an accurate inventory of the cars in actual service, the number and description of such cars as may have been destroyed and replaced by others, and the then location of said cars.

Within twenty (20) days after receiving advice of damage or destruction of any of the cars, Buyer shall give Seller written notice thereof, with full particulars of the extent of the loss or damage incurred.

The Seller shall have the right, but shall be under no obligation, to inspect the cars and the books and records of the Buyer relating to the maintenance and deployment or leasing of the cars at any reasonable time or times during the continuance of this Agreement.

11. MAINTENANCE, REPLACEMENTS, AND INSURANCE. The Buyer covenants and agrees that at all times after the delivery of such cars, it will maintain and keep said cars in good order and repair, at its expense, and shall bear the risk of, and shall not be released from its obligations hereunder in case of any and all damage, loss, or destruction of said cars from whatever cause arising.

The Buyer shall replace the cars, or any parts thereof, at its own cost, except as otherwise herein provided, if the cars or any of them shall be lost or destroyed from any cause whatever during the continuance of this Agreement, with other cars or parts of similar type and of substantially as good materials or construction as that lost or destroyed, or the Buyer shall promptly pay to the Seller a sum equal to the then unpaid balance applicable to such car or cars, which amount shall be treated as a prepayment of, and applied at the election of the Buyer as provided in, the Promissory Note referred to in Annex III (hereinafter called the "Note"). The Buyer will cause any such replacement cars to be marked as the cars so replaced. Any and all such replacements of cars and of any parts shall constitute accessions to the cars and shall be subject to all of the terms and conditions of this Agreement as though part of the original cars delivered hereunder, and included in the word "cars" as used in this Agreement. Title to all such replacement cars shall be taken initially, and shall remain, in the name of the Seller, subject to the provisions hereof.

The Buyer will for a period of one year after delivery and acceptance of the cars and at its expense keep the cars insured (with loss payable to Seller and Buyer as their interests may appear) in a company or companies approved by the Seller against loss, damage or destruction thereof due to fire, lightning, wreck, derailment, collision, flood, tornado, cyclone, sabotage, riot or civil commotion, which insurance shall provide for \$1,000,000 of coverage with a deductible of \$25,000 per car. The Buyer shall deliver to Seller the policies for such insurance or certificates therefor. Each policy in respect of such insurance shall provide for ten days' prior written notice to Seller of the cancellation

of any such insurance and shall further provide that, as to the interest of Seller, such insurance shall not be altered or impaired by any act or omission of anyone other than Seller. In the event that Buyer shall fail to keep the cars insured as above provided, Seller, without impairment of any of its rights and remedies by reason of such default, may, but shall not be required to, obtain appropriate insurance and pay the premium or premiums therefor and in such event Buyer shall and will reimburse Seller for the amount of the premium so paid with interest at eight percent (8%) from the date of payment.

Any monies paid under any such insurance policy shall be applied at the election of the Buyer (i) as a prepayment of, and applied at the election of the Buyer as provided in, the Note or (ii) to the replacement or repair of such cars. In the event that the monies are to be applied to such replacement or repair, they shall be retained by the Seller until replacement or repair of the cars lost, destroyed or damaged, but upon proof satisfactory to the Seller of such replacement or repair and if the Buyer is not then in default in any of its obligations thereunder, the Seller shall pay over such monies to the Buyer. Any monies receivable by or payable to the Buyer from any railroad, or other person or corporation because of loss or destruction of or damage to said cars for any cause whatever shall be paid over to Seller to be held and applied by it as aforesaid.

12. DEFAULT: REMEDIES UPON DEFAULT.

A. Each of the following shall constitute an event of default by the Buyer:

(1) nonpayment of any sum due hereunder or under the

Note, which nonpayment is not cured within ten (10)

days of the due date;

- (ii) if any representation or warranty made by the Buyer or any statement or certificate furnished by the Buyer in connection with this Agreement proves untrue in any material respect and shall not be cured within thirty (30) days after notice thereof to the Buyer or if there is any failure in the due or proper performance of, or compliance with any condition, term, or stipulation provided herein and such default is not cured within thirty (30) days after written notice thereof to the Buyer;
- (iii) the insolvency of the Buyer; any assignment by the Buyer for the benefit of creditors; the filing against the Buyer of a bankruptcy petition or a petition for an arrangement under any present or future act of Congress on the subject of bankruptcy, which petition is not vacated within thirty (30) days after its appointment; filing by the Buyer of a bankruptcy petition or petition for an arrangement under any present or future acts of Congress on the subject of bankruptcy; the failure of the Buyer to vacate the appointment of a receiver or a trustee for the Buyer or any interest in the Buyer's business within thirty (30) days after such appointment; the failure of the Buyer to vacate the institution of any proceeding against the Buyer for any relief under any law relating to the relief of debtors or adjustment of indebtedness of any sort;

B. Upon the occurrence of any event of default by the Buyer, the Seller may at its option:

- (i) declare each and all of the said installment payments under the Note and all other sums of money payable hereunder to be forthwith due and payable;
- (ii) take immediate possession of said cars, including any equipment or parts substituted, added or attached thereto, without demand, process or further notice and, for this purpose, the Seller shall have the right to enter upon the premises wherever said cars may be found, remove the same, employ any available trackage and similar facilities or means of removing same, or cause the Buyer to assist in removing same and the Buyer hereby covenants agrees that he will, at his own expense, forthwith and in the usual manner, cause the cars to be promptly moved to a point or points that shall have been reasonably designated by the Seller, and shall there deliver the same or cause them to be delivered to the Seller. (It is hereby expressly agreed that the covenants in this paragraph are of the essence of this Agreement and that upon application to any court having jurisdiction, the Seller shall be entitled to a decree against the Buyer requiring the specific performance thereof);
- (iii) while retaining or collecting any or all payments theretofore made or payable hereunder by Buyer to Seller, Seller shall have the right to sell said cars

at public or private sale or sales with or without having said cars at the place of sale, upon such reasonable terms and in such manner as the Seller may determine in its sole discretion. The Buyer agrees that the Seller may bid at any such public sale. From the proceeds of any such sale, the Seller shall be entitled to deduct all expenses for retaking, repairing and selling said cars. The balance thereof shall be applied to the total amount due pursuant to this Agreement, including all reasonable costs of collection and expenses including attorney's fees. Any surplus shall be paid over to the Buyer; and in the case of a deficiency, the Buyer shall pay the full amount of such deficiency with interest at the rate of 15%.

In addition, the Seller shall have all rights and remedies under, and take any and all action as provided in, the Uniform Commercial Code as enacted in the State of Georgia. Without limiting the foregoing, the Seller may exercise any one or more or all, and in any order, of the remedies hereinbefore set forth, it being expressly understood that no remedy herein conferred is intended to be exclusive of any other remedy or remedies, but each and every remedy shall be cumulative and shall be in addition to every other remedy given herein or now or hereafter existing at law or in equity or by statute.

13. PROHIBITION AGAINST LIENS. The Buyer hereby agrees to pay or satisfy and discharge any and all sums claimed by any party by, through, or under the Buyer and its successors or substitutes or assigns which, if unpaid, might become a lien or a charge upon the cars, but

shall not be required to pay or discharge any such claim as long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner which will not affect the title of the Seller in and to the cars, or which will not affect Seller's ability to collect the unpaid balance due hereunder. In the event Seller reasonably believes that such lien or charge is not being contested in good faith and by appropriate legal proceedings by Buyer, Seller shall so notify Buyer and Buyer shall promptly satisfy and discharge such lien or charge.

14. ASSIGNMENTS BY THE SELLER. All or any of the rights, privileges and benefits of the Seller under this Agreement, including the right to receive the payments herein provided to be made by the Buyer to the Seller, may be assigned by the Seller and reassigned by any assignee at any time and from time to time, and one or more participation rights in the rights, privileges and benefits may be sold by the Seller or any assignee of the Seller, and all provisions contained herein to the benefit of Seller shall be and remain enforceable by any assignee of the Seller; provided, however, that any such assignment shall not subject any assignee to, nor relieve Seller, or the successors to its manufacturing property and business, from any of the obligations of the Seller as to the construction, delivery, guaranty, warranty or indemnity, or any other duty, obligation or liability hereunder, except the duty to execute necessary and proper instruments of transfer as and when the Buyer shall be entitled thereto, pursuant to the provisions of Section 4 hereof, and the duty to credit on the purchase price monies or cash remitted to such assignee by the Buyer, as provided in Section 3 hereof.

In case of assignment of this Agreement by the Seller, prompt written notice of such assignment shall be given by the Seller to the

Buyer, and the Buyer shall be protected in any payments made hereunder to the Seller prior to notice of such assignment.

In the event that this Agreement be assigned by the Seller as hereinbefore provided, the rights of such assignee to the entire unpaid purchase price, or such part thereof as may be assigned, together with interest thereon as well as any other rights or benefits, including indemnity, hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of Seller, or the successor or successors to its manufacturing property and business, in respect of the cars or the manufacture, delivery, guaranty or warranty thereof, or in respect of any indemnity herein contained, nor be subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Buyer by Seller, or the successor or successors to its manufacturing property and business, and any and all such obligations, howsoever arising, shall be and remain enforceable by the Buyer against and only against Seller and the successor or successors to its manufacturing property and business, and shall not be enforceable against any party or parties in whom title to the cars or any of them, or the rights of the Seller hereunder, shall vest by reason of any sale, assignment, or transfer, or successive sales, assignments or transfers.

15. SUCCESSORS TO, AND ASSIGNMENTS BY, THE BUYER. The Buyer hereby represents and warrants that all the obligations existing or to accrue to the Buyer under this Agreement shall be assumed by any person or corporation acquiring title to or any leasehold interest in the cars, and that upon any sale or lease of the cars, any person or corporation

acquiring title thereto or a leasehold interest therein shall also, as a condition to such acquisition, be bound by all such obligations. It is agreed that any railroad company with which Buyer enters into a deployment agreement shall not be required to assume such obligations solely by reason of the deployment of the cars by it on behalf of the Buyer pursuant to such deployment agreement.

The Buyer covenants and agrees that it will not sell, assign, transfer, or otherwise dispose of its rights under this Agreement, nor transfer its interest in said cars to any other firm, person, or corporation without first obtaining the written consent of the Seller to such sale, assignment or transfer.

The Buyer hereby covenants and agrees that it will not pledge, hypothecate or in any way encumber, or permit the encumbrance of, any part or all of said cars.

16. PRELIMINARY CONDITIONS. Prior to delivery of the cars by the Seller, the Buyer will deliver, in duplicate, to the Seller and to the assignee provided in Annex III an opinion of counsel for the Buyer in scope and substance satisfactory to the Seller and its counsel:

- A. As to the due execution and delivery hereof by the Buyer and legality, validity and enforceability hereof as against the Buyer in accordance with the terms hereof; and
- B. To the effect that the consummation of the transactions herein contemplated and performance of this Agreement will not result in any breach of, or constitute a default under, or result in the creation of any lien, charge or encumbrance upon any property of the Buyer under any indenture, mortgage, deed of trust, bank loan or credit agreement, or other agreement or instrument (other than this Agreement) known to counsel to which the Buyer is a party or by which he may be bound.

In rendering such opinion, counsel may rely, to the extent counsel deems

such reliance necessary or appropriate, upon certificates of governmental officials and the Buyer and acknowledgments by notaries public of execution by Buyer, and may state (i) that enforceability may be limited by bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally, (ii) that the rights and remedies set forth in this Agreement are subject to other applicable state and Federal laws which, in such counsel's opinion, will not materially interfere with the practical realization of the benefits of the security intended to be provided by this Agreement, and (iii) that no opinion is expressed that any particular provision of this Agreement is specifically enforceable.

17. FILING. The Buyer shall at its own cost and expense:
- A. Promptly cause this Agreement, all agreements supplemental hereto or amendatory hereof, and the first assignment of any of the Seller's rights hereunder to be duly filed wherever required in the United States of America for the proper protection of Seller's title to the cars and of its rights hereunder;
  - B. From time to time do and perform all other acts and execute, acknowledge and deliver and file wherever required in the United States of America any and all further instruments required by law or reasonably requested by the Seller for the purpose of such protection of its title and rights or for the purpose of carrying out the intention of this Agreement;
  - C. Duly refile in each such jurisdiction each of the instruments referred to in the preceding Subsections A and B whenever required for such protection of the Seller's title and rights;
  - D. Pay all taxes and fees in connection with each such filing and refiling; and
  - E. Promptly furnish to the Seller a certificate or other evidence of each such filing, refiling and payment of filing fees and taxes, satisfactory to the Seller.

As used in this Agreement, the term "filing" shall also include registering, recording and docketing and the term "refiling" shall

also include re-registering, re-recording and re-docketing.

Buyer shall prepare and file, or cause to be prepared and filed, all documents relating to the registration, maintenance and record-keeping functions involving the cars. Such documents shall include but are not limited to the following:

- (i) registration in Official Railway Equipment Register and the Universal Machine Language Equipment Register; and
- (ii) such reports as may be required from time to time by the ICC and other regulatory agencies.

Buyer shall perform all necessary recordkeeping functions related to the use of the cars by any railroad in accordance with AAR Railroad Interchange Agreements and Rules, such as car hire reconciliation. All such records, and all records of payments, charges and correspondence relating to the cars shall be separately recorded and maintained by Buyer in a form suitable for reasonable inspection by the Seller from time to time during regular business hours of the Buyer or Buyer's agent.

18. SELLER'S WARRANTY OF MATERIAL AND WORKMANSHIP. Seller guarantees to build the cars in accordance with the applicable Specifications, and that the cars will be free from defects in material and workmanship under normal use and service. Seller's obligation under this warranty shall be limited to making good at its plant any part or parts of any car which shall be returned to the Seller within one year after delivery of such car, with transportation charges prepaid and which Seller's examination shall disclose with satisfaction such part or parts to have been thus defective; provided, however, this warranty shall be subject to the following exclusions and conditions:

- 1. Items or specialties, specified or supplied by the Buyer

and not manufactured by the Seller, are excluded from this warranty.

2. Warranty coverage on car running gear and contact points to car structure is limited to one (1) year or 25,000 miles, whichever first occurs. (Car running gear and contact points to car structure utilize components to A.A.R. specifications to provide maximum car service life. The direct relationship between car mileage and service life limits the coverage of these components as specified in this item 2.)
3. Normal use and service may require inspection, adjustment, maintenance, and compliance with all regulatory agencies' known or pending requirements and/or Seller's instructions. This obligation is the Buyer's responsibility and such performance is necessary to preserve stated warranty coverage.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND OF ALL OTHER OBLIGATIONS OR LIABILITY ON THE PART OF THE SELLER. THE SELLER SHALL NOT BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND.

19. MODIFICATION OF AGREEMENT. This Agreement of conditional sale constitutes the entire agreement between the Buyer and the Seller with respect to the sale of the cars herein referred to. No variation or modification of this Agreement, and no waiver of any of its provisions or conditions, shall be valid unless in writing and signed by the Buyer and duly authorized officers of the Seller.

20. NOTICES. Any notice to or demand upon the Buyer by the

Seller pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to Benjamin J. Tarbutton, Jr., Box 260, Linton Road, Sandersville, Georgia 31082 or at such other address as the Buyer shall hereafter specify in writing to the Seller.

Any notice to or demand upon the Seller by the Buyer pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to the Seller at 200 South Michigan Avenue, Chicago, Illinois 60604, or at such other address as the Seller shall hereafter specify in writing to the Buyer.

Any notice to or demand upon any assignee by the Buyer pursuant hereto shall be deemed to have been given or made when deposited in the United States mail, first class postage prepaid, addressed to such assignee at the address of such assignee specified in the assignment relating to it or at such other address as such assignee shall thereafter specify in writing to the Buyer.

21. DEFINITIONS. The term "Seller" whenever used in this Agreement means (i) before any assignment of any of its rights hereunder, Pullman Incorporated (Pullman Standard Division), or any successor or successors to its manufacturing properties and business, and (ii) after any such assignment, any assignee or assignees of such particular assigned rights as regards such rights, and also the original assignor, Pullman Incorporated, as regards any rights hereunder that are retained and not included in any such assignment.

22. SEVERABILITY OF CLAUSES. Any provisions of this Agreement prohibited by any applicable law of any jurisdiction shall as to such jurisdiction be ineffective, without modifying as to such juris-

dition the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Buyer and Seller to the full extent permitted by law.

23. EXTENSION NOT A WAIVER. Time is of the essence of this Agreement. Any extension of time granted by the Seller to the Buyer for the payment of any sum due under this Agreement, whether that extension be for an intermediate payment or for final payment, shall not be deemed a waiver of the title of the Seller reserved hereunder nor of any of its rights and remedies hereunder or otherwise existing.

24. LAW GOVERNING. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of Georgia; but the Seller shall be entitled to such additional rights arising out of the filing hereof or any assignments hereof as shall be governed by the laws of any jurisdiction in which this agreement or any assignment hereof shall be filed.

25. SUCCESSORS. This Agreement shall inure to the benefit of and remain binding upon, the successors and assigns of the parties hereto, respectively.

26. SECTION HEADINGS. Section headings herein are for convenience only and shall not affect the interpretation hereof.

27. EXECUTION IN COUNTERPARTS. This Agreement and any agreement supplemental hereto or amendatory hereof, may be executed in several counterparts, each of which so executed shall be deemed to be an original and such counterparts together shall constitute but one and the same instrument. Although this Agreement is dated for convenience as of September 14, 1979, the actual date or dates of execution hereof by the

parties hereto is or are, respectively, the date or dates stated in the acknowledgements annexed hereto.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

PULLMAN INCORPORATED  
(Pullman Standard Division)

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

Benjamin J. Tarbutton, Jr. (L.S.)  
Benjamin J. Tarbutton, Jr.

ANNEX I

CERTIFICATE OF INSPECTION

The undersigned, being [Benjamin J. Tarbutton, Jr. or his duly authorized representative] hereby certifies that he has inspected nos.

\_\_\_\_\_ of the following railroad equipment:

[Insert Number of Cars] XM Boxcars, PS Lot 1043-B,  
Pullman's proposal dated July 3, 1979, Benjamin J.  
Tarbutton, Jr.'s order dated August 23, 1979, Pullman  
Standard's Specification No. 1042 dated March 29, 1979,  
as amended, General Arrangement Drawing No. M024216-A,  
SAN \_\_\_\_\_ - \_\_\_\_\_

built by Pullman Incorporated (Pullman Standard Division) (hereinafter referred to as "Pullman Standard") in pursuance of that certain Conditional Sale Agreement between Pullman Standard and said Benjamin J. Tarbutton, Jr., dated as of September 14, 1979; and he further certifies that said cars have been completed in full accordance with the requirements of said Agreement and the Specifications therein contained.

Dated this \_\_\_\_ day of \_\_\_\_\_, 1979.

\_\_\_\_\_

# CERTIFICATE OF ACCEPTANCE

[Insert Number of Cars] XM Boxcars, PS Lot 1043-B;

Tarbutton, Jr.'s order dated August 23, 1979; Pullman

Standard's Specification No. 1042, dated March 29,

1979 as amended; General Arrangement Drawing

No. M042416-A, SAN -

have been delivered in good order and running condition by Pullman Incorporated (Pullman Standard Division) (hereinafter referred to as "Pullman Standard") and were accepted by the undersigned on \_\_\_\_\_, 1979 at \_\_\_\_\_, \_\_\_\_\_, in accordance with the provisions of that certain Conditional Sale Agreement dated as of September 14, 1979, between Pullman Standard and Benjamin J. Tarbutton, Jr.

Dated: \_\_\_\_\_, 1979.

### ANNEX III

#### TERMS OF FINANCING

There will be a single collective date of closing which shall be subsequent to the delivery and acceptance by Buyer of the last of the cars pursuant to this Conditional Sale Agreement and after receipt by The Citizens and Southern National Bank of the documents specified in Section 6 of the Agreement and Assignment between Pullman Incorporated ("Pullman") as Assignor and The Citizens and Southern National Bank as Assignee, dated as of September 14, 1979, which document is concurrently being executed with this Conditional Sale Agreement. Said closing date will not be more than ten (10) days after receipt of Pullman's invoice. On this closing date Buyer will pay to Seller twenty percent (20%) of the purchase price due under this Conditional Sale Agreement, and will execute and deliver the Promissory Note for the remaining eighty percent (80%) substantially in the form attached hereto (the "Note"). The Note shall provide that payments shall be made as follows: (i) a payment of all accrued and unpaid interest shall be made on March 1, 1980; (ii) twenty-nine (29) payments of principal and all accrued and unpaid interest thereon shall be made quarterly commencing on June 1, 1980 and continuing on the first day of September, December, March and June thereafter through June 1, 1987, the amount of the principal payment at each such date to equal 1.37931 percent of the total purchase price due under the Conditional Sale Agreement; and (iii) a final payment of all unpaid principal and accrued and unpaid interest thereon to be due and payable September 1, 1987. No interest on the purchase price of any of the cars shall accrue prior to the closing date. On the closing date, The Citizens and Southern National Bank will pay to Seller for the assignment of Seller's rights hereunder the purchase price specified in the Agreement and Assignment referred to above.

PROMISSORY NOTE

Atlanta, Georgia  
\_\_\_\_\_, 1979

FOR VALUE RECEIVED, the undersigned promises to pay to the order of PULLMAN INCORPORATED (hereinafter, together with any subsequent holder hereof, referred to as the "Holder"), at such place as Holder may from time to time designate in writing, without grace, the principal sum of \_\_\_\_\_ (\$ \_\_\_\_\_) DOLLARS, together with interest on the unpaid balance thereon from the date hereof at the rate of 10-1/4 per cent per annum, payable as follows:

- (i) Accrued interest on the total balance outstanding shall be paid on March 1, 1980;
- (ii) Twenty-nine (29) equal payments of principal of \$ \_\_\_\_\_ with accrued and unpaid interest thereon shall be payable quarterly commencing on June 1, 1980 and continuing on the first day of each September, December, March and June thereafter through June 1, 1987; and
- (iii) A final payment of all unpaid principal and accrued and unpaid interest thereon shall be paid on September 1, 1987.

Interest payable hereunder shall be computed based upon the actual number of days in each calendar year.

The indebtedness evidenced hereby may be prepaid in whole or in part at any time, and from time to time, without penalty or premium. The amount of any prepayment and the application thereof shall be as designated in writing by the undersigned at the time such prepayment shall be made.

This Note is executed in connection with a Conditional Sale Agreement between Pullman Incorporated and the undersigned (the "Conditional Sale Agreement") dated September 14, 1979.

The Holder shall have the optional right to declare the amount of the total indebtedness evidenced by this Note to

be due and forthwith payable in advance of the maturity date of any installment, as fixed herein, upon the failure of the undersigned to pay, when due, any one of the installments hereon, or upon the occurrence of any event of default on the part of the undersigned in the Conditional Sale Agreement. Upon the exercise of this option by the Holder, the entire unpaid balance shall bear interest at the rate of fifteen (15%) percent per annum until paid.

Time is of the essence of this Note and, in the event this Note is collected by law or through an attorney at law, or under advice therefrom, the undersigned agrees to pay all costs of collection included fifteen (15%) percent of the principal and interest as attorneys' fees.

The undersigned, and all endorsers and other parties hereto, hereby jointly and severally waive presentment, demand for payment, protest and notice for demand for payment, protest and notice of nonpayment and any and all other notices required by law with respect thereto. The undersigned further renounces, for himself and family, any and all homestead and other exemption rights or other rights intended for the benefit of debtors which are waivable, which he or his family may have by virtue of the laws of any State, or the United States, against this debt or any renewal or extension thereof.

No failure of the Holder to exercise, and no delay in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All rights, powers and remedies set forth in the Conditional Sale Agreement or herein are cumulative and are not exclusive of any other rights, powers and remedies provided by law.

IN WITNESS WHEREOF, the undersigned has set his hand and seal all as of the day and year first above written.

\_\_\_\_\_  
Benjamin J. Tarbutton, Jr. (SEAL)

ACKNOWLEDGMENTS OF EXECUTION OF  
CONDITIONAL SALE AGREEMENT

PULLMAN INCORPORATED

STATE OF ILLINOIS

COUNTY OF COOK

On this \_\_\_\_\_ day of September, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Pullman Incorporated (Pullman Standard Division), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

ACKNOWLEDGMENTS OF EXECUTION OF  
CONDITIONAL SALE AGREEMENT

BENJAMIN J. TARBUTTON, JR.

STATE OF GEORGIA

COUNTY OF <sup>Morgan</sup>~~WASHINGTON~~

On this 13 day of September, 1979, before me personally  
appeared BENJAMIN J. TARBUTTON, JR., to me known to be the person  
described in and who executed the foregoing instrument and he acknow-  
ledged that he executed the same as his free act and deed.

[SEAL]

Lynn J. Hanson  
Notary Public

My Commission Expires:  
Notary Public Morgan County, Georgia  
My Commission Expires March 20, 1980

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AGREEMENT AND ASSIGNMENT

BETWEEN

PULLMAN INCORPORATED

(Pullman Standard Division)

As Assignor,

and

THE CITIZENS AND SOUTHERN NATIONAL BANK

As Assignee

One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Benjamin J. Tarbutton, Jr.'s order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979 as amended; General Arrangement Drawing No. M042416-A, SAN 10,000-10,099

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Dated as of

September 14, 1979

## I N D E X

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THIS AGREEMENT AND ASSIGNMENT, dated as of September 14, 1979 between PULLMAN INCORPORATED, a Delaware corporation (PULLMAN STANDARD Division) hereinafter called the "Manufacturer," and THE CITIZENS AND SOUTHERN NATIONAL BANK, having a usual place of business in Atlanta, Georgia, hereinafter called the "Assignee";

W I T N E S S E T H:

WHEREAS, Manufacturer and Benjamin J. Tarbutton, Jr. (hereinafter called the "Buyer"), entered into a Conditional Sale Agreement dated as of September 14, 1979 (hereinafter called the "Conditional Sale Agreement") for the sale by Manufacturer to Buyer of One Hundred (100) XM Boxcars, PS Lot 1043-B; Pullman's proposal dated July 3, 1979; Buyer's order dated August 23, 1979; Pullman Standard's Specification No. 1042 dated March 29, 1979 as amended; General Arrangement Drawing No. M042416-A, SAN-10,000 to 10,099, both inclusive, all hereinafter referred to as the "cars," all as more particularly described therein, a counterpart of the Conditional Sale Agreement being prefixed hereto.

NOW, THEREFORE, this Agreement and Assignment witnesseth that in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration paid by Assignee to Manufacturer, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

1. Manufacturer hereby sells, assigns, transfers and sets over unto the Assignee, its successors and assigns, all the right, title and interest of Manufacturer in and to the Conditional Sale Agreement (except the right to manufacture the cars and the right to receive reimbursement for taxes paid or incurred by the Manufacturer as provided in Section 5 thereof) in respect of the cars, the Note as set forth in Annex III to the Conditional Sale Agreement (hereinafter called the "Note") and any other sums

becoming due under the Conditional Sale Agreement in respect of the cars; and all right, title and interest of Manufacturer in and to the cars as the same shall be delivered, upon payment by the Assignee to the Manufacturer of the amounts required to be paid under Section 6 hereof for such cars, together with all Manufacturer's rights, powers, privileges and remedies in respect to the cars under the Conditional Sale Agreement, without any recourse, however, against Manufacturer for or on account of the failure of Buyer to make any of the payments provided for in or otherwise to comply with any of the provisions of the Conditional Sale Agreement or the Note. In furtherance of the foregoing assignment and transfer, Manufacturer hereby authorizes and empowers Assignee, in Assignee's own name or in the name of Assignee's nominee, to ask, demand, sue for, collect, receive and enforce, any and all sums to which Assignee is or may become entitled under this Assignment and compliance by Buyer with the terms and agreements on its part to be performed under the Conditional Sale Agreement and the Note, but without expense and liability to Manufacturer and for the sole benefit of Assignee.

2. Manufacturer covenants and agrees that it will construct the cars in full and complete accordance with the Conditional Sale Agreement and that it will deliver the same on completion thereof to the Buyer free of all liens and encumbrances, except for the provisions for the Conditional Sale Agreement; that notwithstanding this assignment it will perform and fully comply with each and all of the covenants of the Conditional Sale Agreement to be performed and complied with by it; that, as set forth in and subject to the provisions of the Conditional Sale Agreement, it has

legal and equitable title to the cars and that it has the right to sell the same; that it will warrant and defend the same against the lawful demands of all persons whomsoever based on claims originating prior to the delivery of the cars to the Buyer, subject, however, to the provisions of the Conditional Sale Agreement, and the rights of the Buyer thereunder; and that it will from time to time, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance, and do such further acts and things as may be necessary and appropriate to give effect to the provisions contained in this Assignment and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be.

3. This Agreement and Assignment will not in any way affect or modify (1) Manufacturer's obligation to deliver the cars in accordance with its Conditional Sale Agreement or (2) its obligations (a) to indemnify the Buyer against and save and keep the Buyer harmless from loss and expense resulting from patent claims and (b) to replace parts, all as set forth in Sections 6 and 18 of the Conditional Sale Agreement, respectively, the said obligations to be and remain enforceable against and only against Manufacturer as provided in the Conditional Sale Agreement.

Manufacturer will indemnify Assignee against and save and keep Assignee harmless from all expense, loss or damage incurred or sustained by Assignee by reason of any defense, set-off or counterclaim of the Buyer in any suit or action brought by Assignee under the Conditional Sale Agreement arising out of the alleged breach by Manufacturer of any of its obligations mentioned in the first paragraph of this Article 3, or arising by reason of any other indebtedness or liability at any time owing to the Buyer by Manufacturer.

4. Manufacturer represents and warrants to Assignee, its successors and assigns, that the Conditional Sale Agreement was lawfully executed by it for a valid consideration and that the Manufacturer has no reasons to believe that it is not a valid and existing contract and, according to its terms, binding upon the parties thereto.

5. Manufacturer agrees to indemnify Assignee and to save and keep it harmless from and against any and all royalties, damages, claims, suits, judgments and costs to the same extent provided to the Buyer in section 7 of the Conditional Sale Agreement.

6. At the Closing referred in Annex III of the Conditional Sale Agreement, Assignee will pay to Manufacturer the aggregate purchase price set forth in Section 1 of the Conditional Sale Agreement for the One Hundred (100) cars upon receipt by Assignee of the following documents in form and substance satisfactory to it:

- (a) A bill of sale from Manufacturer to Assignee transferring to Assignee title to all cars so delivered and warranting said title to be free and clear as of the time of delivery to Buyer of all liens and encumbrances of any nature except only the rights of Buyer under the Conditional Sale Agreement;
- (b) A certificate or certificates of acceptance by an authorized representative of the Buyer stating that the cars covered by such certificate have been accepted by him on behalf of the Buyer as conforming in all

respects to the requirements and provisions of the Conditional Sale Agreement;

- (c) Manufacturer's invoice for the purchase price of said cars so accepted;
- (d) An opinion or opinions of counsel of Manufacturer stating (i) that the Manufacturer is a duly organized and existing corporation in good standing under the laws of the State of incorporation and has the power and authority to own its properties and to carry on its business as now conducted, (ii) that the Conditional Sale Agreement has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms, (iii) that this Agreement and Assignment has been duly authorized, executed and delivered by Manufacturer and is a valid instrument binding upon Manufacturer and enforceable against Manufacturer in accordance with its terms and (iv) that there are no liens, security interests or other defects in the interests being assigned hereunder.
- (e) An opinion of counsel for the Buyer in scope and substance satisfactory to the Assignee and its counsel:

- (i) As to the compliance by the Buyer with Subsections A and D of Section 17 of the Conditional Sale Agreement;
- (ii) As to the jurisdiction of any Federal or State public regulatory body or bodies over the entering into or performance of the Conditional Sale Agreement, and, if any such regulatory body or bodies has such jurisdiction, the sufficiency of any such authorization or exemption thereof or consent thereto by each such public regulatory body; and
- (iii) To the effect that, based upon a review of the records of the Interstate Commerce Commission, there are no other security interests in the cars.

In case said opinion shall show, pursuant to Subsection (e)(ii) above, that any regulatory body has jurisdiction over the entering into or performance of the Conditional Sale Agreement, copies certified by an appropriate officer of the Buyer of the application of the Buyer to such public regulatory body, and of each amendment thereto, and copies, certified by an appropriate official of such public regulatory body, of each order issued by such public regulatory body upon the basis of such application shall be delivered with such opinion. In rendering such opinion, counsel may rely, to the extent counsel deems such reliance necessary or appropriate, upon certificates of governmental officials and the Buyer.

7. Assignee may assign its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Buyer thereunder in respect of said cars. In the event of any such assignment any such subsequent or successive assignee or assign-

nees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of Assignee hereunder.

8. The terms of this Agreement and Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Georgia.

9. This Agreement and Assignment may be simultaneously executed in any number of counterparts, each of which so executed shall be deemed to be an original and such counterparts, together, shall constitute but one and the same instrument. Assignee agrees to deliver to Buyer one of such counterparts, or a certified copy thereof, in addition to the number required for recording or filing.

IN WITNESS WHEREOF, Manufacturer and Assignee have caused this instrument to be executed in their respective names by their respective officers, thereunto duly authorized, and their respective corporate seals to be hereto affixed, duly attested, as of the day and year first above written.

PULLMAN INCORPORATED  
(Pullman Standard Division)

By: \_\_\_\_\_  
Vice President

ATTEST:

\_\_\_\_\_  
Assistant Secretary

THE CITIZENS AND SOUTHERN NATIONAL BANK

By: C. Douglas M. Heever  
Vice President

ATTEST:

Henry T. Hazel  
Assistant Vice President

The foregoing Agreement and Assignment is acceptable to the undersigned, and the undersigned does hereby acknowledge receipt of the written notice of such assignment referred to in Section 14 of the Conditional Sale Agreement and does hereby consent to and acquiesce in this assignment.

Benjamin J. Tarbutton, Jr.  
Benjamin J. Tarbutton, Jr.

ACKNOWLEDGMENTS OF EXECUTION OF  
AGREEMENT AND ASSIGNMENT

PULLMAN INCORPORATED

STATE OF ILLINOIS

COUNTY OF COOK

On this \_\_\_\_\_ day of September, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Pullman Incorporated (Pullman Standard Division), that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

ACKNOWLEDGMENTS OF EXECUTION OF  
AGREEMENT AND ASSIGNMENT

THE CITIZENS AND SOUTHERN NATIONAL BANK

STATE OF GEORGIA

COUNTY OF FULTON

On this 13 day of September, 1979, before me personally appeared C. Douglas McKee, to me personally known, who being by me duly sworn, says that he is the Vice President of THE CITIZENS AND SOUTHERN NATIONAL BANK, that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[SEAL]

Russella Dyer  
Notary Public

My Commission Expires:

Notary Public, Georgia, State at Large

My Commission Expires Mar. 7, 1983

ACKNOWLEDGEMENTS OF EXECUTION OF  
AGREEMENT AND ASSIGNMENT

BENJAMIN J. TARBUTTON, JR.

STATE OF GEORGIA

COUNTY OF <sup>Morgan</sup>~~WASHINGTON~~

On this 13 day of September, 1979, before me personally  
appeared BENJAMIN J. TARBUTTON, JR., to me known to be the person  
described in and who executed the foregoing instrument and he acknow-  
ledged that he executed the same as his free act and deed.

[SEAL]

Lynn J. Hanson  
Notary Public

My Commission Expires:  
Notary Public Morgan County, Georgia  
My Commission Expires March 20, 1980

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